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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,401	03/02/2005	Akihiro Fukasawa	1190-060 1PUS1	7072
2292 7590 07/26/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER KLIMOWICZ, WILLIAM JOSEPH	
			ART UNIT 2627	PAPER NUMBER
			NOTIFICATION DATE 07/26/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

## Office Action Summary

Application No.

10/526,401

Applicant(s)

FUKASAWA, AKIHIRO

Examiner

William J. Klimowicz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4 and 7 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election with traverse of Species C (corresponding to FIGS. 13-15) in the reply filed on June 18, 2007 is acknowledged. The traversal is on the ground(s) that:

Although Figs. 10-19 have differences with respect to the disk device each of Figs. 10-12 (corresponding to species B), 13-15 (corresponding to species C), and 16-19 (corresponding to species D) include like components, such as a transverse unit, a carrying means, a main chassis, a pair of coaxial rotation shafts, and a pair of supporting portions that make up the general structure of the disk device. Claim 4 recites features of the general structure of the disk device and thus is generic to Figs. 10-19 (Species B-D). Accordingly upon allowance of claim 4, recapture of claims directed to species B and D are respectfully requested.

See Applicant's remarks, at page 2 of the Response filed on June 18, 2007.

This is not found persuasive because the Examiner maintains that each identified Species and/or Invention grouping, as articulated in the previous Requirement for Restriction, would impose a grave and serious burden upon the Examiner. Moreover, in accordance with **37 CFR 1.104**, to the nature of each distinctly grouped Species and/or Invention grouping, the Examiner must make a thorough study thereof and a thorough investigation of the available prior art relating to the claimed subject matter of each distinctly identified Species and/or Grouping. The examination for each distinct Specie/Grouping must be complete with respect both to compliance of the application with the applicable statutes and rules and to the patentability of the invention

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as claimed, in addition to matters of form, including **Title 35** to the **United States Code**, sections **101, 102, 103** and **112** to each distinctly grouped invention.

Because these inventions are **independent or distinct** for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is **PROPER**.

More specifically, as set forth in **MPEP § 803**:

Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (**MPEP § 806.04 - § 806.04(i)**) *or* distinct (**MPEP § 806.05 - § 806.05(i)**). [Emphasis in bold italics added].

Moreover as set forth in **MPEP § 802.01**, the meaning of independent “and” distinct within the context of Patent Office restriction policy and practice is articulated as follows:

**35 U.S.C. 121** quoted in the preceding section states that the Commissioner may require restriction if two or more “independent and distinct” inventions are claimed in one application. In **37 CFR 1.141**, the statement is made that two or more “independent and distinct inventions” may not be claimed in one application.

This raises the question of the subjects as between which the Commissioner may require restriction. This, in turn, depends on the construction of the expression “independent and distinct” inventions.

“Independent,” of course, means not dependent. If “distinct” means the same thing, then its use in the statute and in the rule is redundant. If “distinct” means something different, then the question arises as to what the difference in meaning between these two words may be. The hearings before the committees of Congress considering the codification of the patent laws indicate that **35 U.S.C. 121**: “enacts as law existing practice with respect to division, at the same time introducing a number of changes.”

The report on the hearings does not mention as a change that is introduced, the subjects between which the Commissioner may properly require division.

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The term “independent” as already pointed out, means not dependent. A large number of subjects between which, prior to the **1952 Act**, division had been proper, are dependent subjects, such as, for example, combination and a subcombination thereof; as process and apparatus used in the practice of the process; as composition and the process in which the composition is used; as process and the product made by such process, etc. If section **121** of the **1952 Act** were intended to direct the Commissioner never to approve division between dependent inventions, the word “independent” would clearly have been used alone. If the Commissioner has authority or discretion to restrict independent inventions only, then restriction would be improper as between dependent inventions, e.g., the examples used for purpose of illustration above. Such was clearly not the intent of Congress. Nothing in the language of the statute and nothing in the hearings of the committees indicate any intent to change the substantive law on this subject. On the contrary, joinder of the term “distinct” with the term “independent,” indicates lack of such intent. The law has long been established that dependent inventions (frequently termed related inventions) such as used for illustration above may be properly divided if they are, in fact, “distinct” inventions, even though dependent.

Thus, clearly, the restriction is proper if the Examiner shows that the inventions are distinct **or** independent, but not necessarily both independent *and* distinct.

Moreover still, as has been held, if there is an express admission that the claimed inventions would have been obvious over each other within the meaning of **35 U.S.C. § 103**, restriction should not be required. *In re Lee*, 199 USPQ 108 (Comm’r Pat. 1978).

***There is nothing on record, at present, to show that the distinctly grouped species/inventions are obvious variants.***

The requirement is still deemed proper and is therefore made **FINAL**.

#### ***Claim Status***

Claims 1-8 are currently pending.

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Claims 5 and 6 have been considered on the merits, and have been indicated as containing allowable subject matter.

Claims 1-3 and 8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention/specie, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 18, 2007.

### ***Specification***

The disclosure is objected to because of the following informalities:

With regard to page 1 (line 35), the word "dick" should be changed to the word --disk--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 4 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Moriyama et al. (US 2003/0076773 A1).

As per claim 4, Moriyama et al. (US 2003/0076773 A1) discloses a disk device comprising: a traverse unit (5, 51, 52) including a turn table (51) that holds and rotates a disk

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medium (D), an optical pickup (52) that performs at least one of writing and reading of information on said disk medium (D), and a traverse chassis (5) that supports them; a carrying means (4) that carries said disk medium (D) between a loading position and an unloading position; and a main chassis (1) supporting said traverse unit (5, 51, 52) so that said traverse unit (5, 51, 52) is capable of rotating, allowing said traverse unit (5, 51, 52) to move toward and away from said disk media, wherein said traverse chassis (5) has a pair of coaxial rotation shafts (60, 60) for said rotating, and said main chassis (1) has a pair of supporting portions (15, 16 on each side) respectively supporting said rotation shafts (60, 60), and wherein said supporting portions (15, 16) are so constructed that said rotation shafts (60, 60) are inserted into said supporting portions (15, 16) in a direction substantially parallel to the carrying direction of said disk medium (D) carried by said carrying means (4) (e.g., see, *inter alia*, paragraphs [0064-0065]).

As per claim 7, wherein said rotation shafts (60, 60) have abutting portions (61) that abut against said supporting portions (15, 16) - see FIG. 8 - so as to prevent said pair of supporting portions (15, 16) from being deformed in the directions away from each other.

#### ***Allowable Subject Matter***

Claims 5 and 6 are tentatively objected to as being dependent upon a rejected base claim, but, pending an updated search, amendments or arguments presented by the Applicant and considered by the Examiner in reply to this office communication, would be favorably considered if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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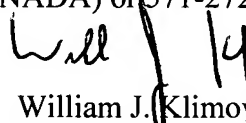
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Klimowicz whose telephone number is (571) 272-7577. The examiner can normally be reached on Monday-Friday (7:30AM-6:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William R. Korzuch can be reached on (571) 272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
William J. Klimowicz  
Primary Examiner  
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WJK